

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101
Prepared by: Christopher M. Gratz, Planner II

SUBJECT: Variance, V 2-1-02 John D. Voigt, Esquire/Hanmi Baptist Church, 2150 Flamingo Road/Generally located 660' south of SW 20 Street, on the east side of Flamingo Road.

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM:

V 2-1-02 John D. Voigt, Esquire/Hanmi Baptist Church, 2150 Flamingo Road (AG)

REPORT IN BRIEF:

The petitioner has requested to reduce the required minimum separation between a free standing House of Worship from 2,500' to 2,300". The reduction is required to allow development of a House of Worship on the subject site, since Calvary Chapel is located 2,300' to the northwest. A rezoning petition, ZB 2-1-02, has been filed concurrently with this request.

PREVIOUS ACTIONS: At the November 6, 2002, Town Council meeting the item was tabled to the December 4, 2002, at the request of the applicant.

At the December 4, 2002, Town Council meeting the item was tabled to January 2, 2003, meeting at the request of the applicant.

CONCURRENCES: At the October 9, 2002, Planning and Zoning Board meeting, Ms. Lee made a motion, seconded by Vice-Chair Bender, to deny (Motion carried 5-0).

FISCAL IMPACT: None

RECOMMENDATION(S): Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Planning Report, Justification, Survey, Conceptual Master Plan, Letter from Paradise Pines H.O.A., Land Use Map, Zoning and Aerial Map

TOWN OF DAVIE
Development Services Department
Planning and Zoning Division Staff
Report and Recommendation

APPLICANT INFORMATION

Owner:

Name: Pastor Seung Soo Kim
Hanmi Baptist Church
Address: 1219 Fairlake Trace, #99
City: Weston, FL 33326
Phone: (954) 792-1025

Agent:

Name: John D. Voigt, Esquire
Doumar, Allsworth, et al.
Address: 1177 SE 3 Avenue
City: Fort Lauderdale, FL 33316
Phone: (954) 762-3400

BACKGROUND INFORMATION

Date of Notification: October 2, 2002 **Number of Notifications:** 19

Application History: At the November 6, 2002, Town Council meeting the item was tabled to the December 4, 2002, at the request of the applicant.

At the December 4, 2002, Town Council meeting the item was tabled to January 2, 2003, meeting at the request of the applicant.

Application Request: Variance **FROM:** Section 12-34(DD) of the Land Development Code which requires that no freestanding house of worship shall be located closer than 2,500' from any other freestanding house of worship; **TO:** reduce the minimum separation to 2,300'.

Address/Location: 2150 Flamingo Road/Generally located 660' south of SW 20 Street, on the east side of Flamingo Road.

Future Land Use Plan Designation: Residential (1 DU/AC)

Zoning: AG, Agricultural District

Existing Use: Vacant

Proposed Use: House of Worship

Parcel Size: 4.99 acres (217,364 square feet)

	<u>Surrounding Uses:</u>	<u>Surrounding Land Use Plan Designation:</u>
North:	V.I. Pet Resort (Vacant)	Residential (1 DU/AC)
South:	Vacant	Residential (1 DU/AC)
East:	Paradise Pines	Residential (1 DU/AC)
West:	Vacant	Residential (1 DU/AC)

Surrounding Zoning:

North:	AG, Agricultural District
South:	AG, Agricultural District
East:	AG, Agricultural District
West:	AG, Agricultural District

ZONING HISTORY

Related Zoning History: The adjacent parcel to the north has been approved to be developed with an animal hospital and kennel known as V.I. Pet Resort. The applications associated with V.I. Pet Resort include FX 11-1-00, P 8-2-01, SE 9-1-01, and SP 12-1-01.

Previous Requests on same property: Rezoning petition ZB 2-1-01 has been filled concurrently with this application. The request is to rezone the 4.99 acre subject site **FROM:** AG, Agricultural District; **TO:** CF, Community Facilities District.

APPLICATION DETAILS

The petitioner has requested to reduce the required minimum separation between a free standing House of Worship from 2,500' to 2,300". The reduction is required to allow development of a House of Worship on the subject site, since Calvary Chapel is located 2,300' to the northwest. A rezoning petition, ZB 2-1-02, has been filed concurrently with this request.

Applicable Codes and Ordinances

Section 12-34 (DD) of the Land Development Code, Churches, Houses of Worship states: No freestanding house of worship shall be located closer than twenty-five hundred (2500) feet from any other freestanding house of worship, measured from the nearest point on the nearest property line of one house of worship to the nearest point of the nearest property line of another house of worship in a straight line. The applicant shall furnish a certified survey from a land surveyor registered in the State of Florida, indicating the distance between the property lines of the proposed house of worship and any other house of worship.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. Planning Area 2 includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by SW 100 Avenue. The predominant existing and planned land use is single family residential at a density of one dwelling per acre.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 100. Platting of the subject site is required.

Applicable Goals, Objectives & Policies: *Future Land Use Plan, Community Facilities Use, Policy 13-2:* Community Facilities may be permitted in land use categories other than Community Facilities category, provided such development is compatible with and does not adversely affect the development of surrounding land for designated purposes.

Staff Analysis

The intent of the 2,500' separation between free standing houses of worship required by the Land Development Code is to discourage the concentration of this use which has specific peak volume traffic impacts. The subject site is located on the Flamingo Road frontage road, 2,300' southeast of Calvary Chapel, across Flamingo Road, which is State road with 200' of right-of-way.

The petitioner has submitted a Conceptual Master Plan that shows a 10,000 square foot House of Worship, and has offered a voluntary Declaration of Restrictions to limit the activities on the site. By taking these factors in to consideration, it is believed that the specific peak volume traffic impacts of this use will be mitigated. It is noted that written approval of the request from the adjacent neighbors, Paradise Pines Home Owners Association, is attached.

Findings of Fact

Variances:

Section 12-309(B) (1):

The following findings of facts apply to the variance request:

- (a) There are not special circumstances or conditions applying to the land or building for which the variance is sought; which circumstances or conditions are not peculiar to such land or building and do apply generally to land or buildings in the same district; and that said circumstances or conditions are not such that the strict application of the provisions of this chapter would not deprive the application of the reasonable use of such land or building for which the variances are sought; and that alleged hardship is self-created by any person having an interest in the property.

The subject site is not unique; the conditions generally apply to land in the same district; the circumstances would not deprive the applicant of reasonable use of the land since it can be achieved without a variance; the variance request is created by the petitioner's desire to construct a House of Worship.

- (b) The granting of the variance is not necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.

Granting of the variance is not necessary for reasonable use of the land, since reasonable use can be achieved without a variance. The request is the minimum needed to construct a House of Worship on the subject site.

- (c) Granting of the requested variances will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Allowing development of a House of Worship with restrictions that limit the intensity of the use will not be detrimental to the neighborhood.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for further consideration.

Planning and Zoning Board Recommendation

At the October 9, 2002, Planning and Zoning Board meeting, Ms. Lee made a motion, seconded by Vice-Chair Bender, to deny (Motion carried 5-0).

Exhibits

1. Justification
2. Declaration of Restrictions
3. Survey
4. Conceptual Master Plan
5. Letter from Paradise Pines H.O.A.
6. Land Use Map
7. Zoning and Aerial Map

Prepared by: _____

Reviewed by: _____

**Hanmi Baptist Church
Variance Justification
February 15, 2002**

Section 12-34 (DD) of the Land Development Code states that no freestanding house of worship shall be located closer than twenty-five hundred (2,500) feet from any other freestanding house of worship. This request is to reduce the required separation between houses of worship from 2,500 to 2,300 feet.

The project site is +/-7.97 acres located on the east side of Flamingo Road, approximately 660 feet south of SW 20th Street, and is currently vacant. The site is bound on the north by a proposed animal hospital and kennel; on the south by vacant land zoned AG, Agriculture; on the west by Flamingo Road; and on the east by a residential development zoned AG.

The applicant proposes to rezone the west +/- 4.99 acres adjacent to Flamingo Road to CF, Community Facility, and to leave the east +/- 3.01 acres as AG for future residential development.

As required by code, the following is an analysis of the criteria for reviewing variance requests.

- (1) There may be special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the same district, and that said circumstance or condition is such that the strict application of the provisions of this chapter would deprive the application of the reasonable use of such land or building for which the variance is sought, and that alleged hardship is not self-created by any person having an interest in the property.*

The special circumstances or conditions applying to the land are such that the property owners purchased the property with the intent to construct a church. They have subsequently obtained approval from the Town and the County to register the property as such; therefore they do not pay property taxes, as all churches are exempt from property taxes. This church will be over 2,000 feet from the Calvary Chapel church, which is being built. They are also separated by a 200' right-of-way state road, plus this church is located on the Flamingo Road frontage road.

- (2) *The granting of the variance may be necessary for the reasonable use of the land or building and that the variance as requested may be the minimum variance that will accomplish this purpose.*

The granting of this variance is necessary for the reasonable use of the property as a church. The fact that it is closer than 2,500 feet to another CF use requires that this request be made.

- (3) *Granting of the requested variance is in harmony with the general purpose and the intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public.*

Granting of the requested variance is in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public. In fact, because the property to the north is being developed as an Animal Hospital/kennel, the area to walk the animals will be adjacent to this property. The church will serve as a buffer from the kennel to the residential AG zoning to the south of the property. By rezoning only the west 4.99 acres of the Property as CF and leaving the east 3.01 acres as AG, this will serve as a buffer also to the residents to the east and will match the proposed 3.01 acres of residential immediately to the north behind the kennel.

Also proposed as part of the rezoning is a voluntary declaration of restrictions that will restrict the uses of the north 4.99 acres to exclude the uses of hospitals, mausoleums, cemeteries, mental institutions, residential/life care facilities, flood control, telecommunications towers, civic centers, and nursing homes. It will also require a minimum 25' landscape buffer on the south and east property boundaries adjacent to residential districts.

Policy 13-3 of the Comprehensive Plan states that the location of regional community facilities should be encouraged in close proximity to primary transportation facilities such as Flamingo Road and I-595. It also encourages the location of community facilities in areas where such uses are complimentary to surrounding existing and planned facilities. As stated above, the church use is more compatible to the kennel than a residence would be.

LAW OFFICES
DOUMAR, ALLSWORTH, CROSS, LAYSTROM,
PERLOFF, VOIGT, WACHS, MAC IVER & ADAIR, LLP

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EMERSON ALLSWORTH, P.A.
C. SCOTT ALLSWORTH, P.A.
MARK E. ALLSWORTH, P.A.
WILLIAM S. CROSS, P.A.**
RAYMOND A. DOUMAR, P.A.*

† ALSO ADMITTED IN PENNSYLVANIA
* ALSO ADMITTED IN MICHIGAN
* BOARD CERTIFIED REAL ESTATE LAWYER
** CERTIFIED CIRCUIT CIVIL AND FAMILY MEDIATOR

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FORT LAUDERDALE, FLORIDA 33316-1109
BROWARD (954) 762-3400
MIAMI (305) 945-3172
TELEFAX (954) 525-3423

C. WILLIAM LAYSTROM, JR., P.A.
STUART J. MAC IVER, P.A.
JOHN W. PERLOFF, P.A.
JOHN D. VOIGT, P.A.
JEFFREY D. WACHS, P.A.†

VIA FAX AND U.S. MAIL
(954) 797-1204

December 18, 2002

Mr. Christopher M. Gratz
Planner II
Development Services Department
Town of Davie
6591 Orange Drive
Davie, Florida 33314-3399

Re: Hanmi Baptist Church
Rezoning Application ZB2-1-02
Variance Application V2-1-02

Dear Chris:

It is my understanding that you are going to be issuing the staff report for town council on these two applications this week. It is my understanding that those reports will be virtually unchanged from the reports that were issued on October 4, 2002 to the planning and zoning board. As such, I would like to provide the following comments on behalf of the petitioner in response to those reports.

With regard to the rezoning application, the petitioner agrees in principle to your Findings of Fact (a), (b), (d), (e), (f), (g), (h). The petitioner, however, takes issue with the Findings of Fact listed as (c), (i) and (j). Finding (c) states that the existing zoning district boundaries are logically drawn and states

Mr. Christopher M. Gratz
December 18, 2002
Page 2

only that they are the original zoning boundaries in support of that conclusion. As I have understood it, it has long been the position of the Town of Davie that the AG zoning along Flamingo Road was considered a transitional designation only and that it was not realistic to believe that agricultural endeavors could be conducted on a 4.99 acre piece of land. I believe that most of the surrounding land that has been developed has been done so as residential, community facility or commercial, and not as agricultural.

With regard to Finding of Fact (i), the petitioner disagrees that there are no substantial reasons why the property can be used and accorded with existing zoning. Again, there is no factual support for this conclusion, and I would suggest that farming on less than a five acre tract is entirely unrealistic and not compatible with the nearby residential neighborhoods. I believe that the agricultural uses that could be placed on such a piece of property would be extremely offensive to the surrounding neighbors.

With regard to Finding of Fact (j), the petitioner disagrees that this rezoning will not enhance the Town's tax base. The entire approximately nine acre tract has been off the tax rolls for several years since it is owned by a recognized church. The rezoning of only a portion of that land would not change that status, but would leave the rest free to be placed back on the tax rolls as it is sold for residential development. In light of the Religious Land Use and Institutionalized Persons Act (RLUIPA), Title 42, Chapter 21C of the United States Code, this rezoning application should receive favorable consideration to allow the petitioner's property owner to utilize the real property for the purpose of religious exercise.

In the same light, we take the position that the variance application is not required. The variance is needed only because the closest point of this church property is less than 2,500 feet from the closest point of a proposed church property diagonally across Flamingo Road. The petitioner purchased this property with the intent of developing it as a church well in advance of the time that the religious facility planned across the street was begun.

Mr. Christopher M. Gratz
December 18, 2002
Page 3

Further, the 25-foot restriction is arbitrary and capricious in light of the RLUIPA in that it does not further any compelling governmental interest. The properties are 2,300 feet apart on opposite sides of Flamingo Road, which obviously is a divided six lane highway. The report states that the purpose of the distance separation requirement is to control traffic flow. Under the Broward County trips calculation currently in use that calculates peak hour travel, neither facility will pose any traffic problem to the Town of Davie or Broward County, so the distance separation requirement serves no purpose in this instance.

Further, the petitioner strenuously disagrees with the Staff Findings of Fact (a)(b). With regard to Finding of Fact (a), there are special circumstances applying to this land in that it is owned by a religious institution and is intended to be utilized for religious exercise. This is specifically within the purview of the RLUIPA and, therefore, makes this property unique as compared to all other properties on Flamingo Road that are not owned by religious institutions. Second, the rezoning has been found to be appropriate, but would be useless without the granting of the variance. Obviously if the property is rezoned and the variance is not granted, the petitioner is totally deprived of the use of the property. Finally, it is entirely unrealistic to believe that a religious institution would engage in agricultural activities so as to utilize the property. As a practical matter, the property would have to be sold by the church to a developer for there to be any utilization of the property should the variance be denied.

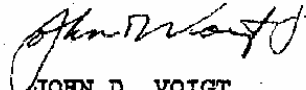
With regard to Finding of Fact (b), it is basically a restatement of (a) and the same arguments apply. The granting of the variance is necessary for the reasonable use of the land under the RLUIPA.

In addition to the foregoing, the church has agreed to reduce the size of its facility from 10,000 square feet to a maximum of 6,500 square feet to ensure that its size and congregation would not become a burden on the roads or any surrounding neighborhoods, and to be less obtrusive, while providing more open space. Secondly, the rear three acres of the property, and possibly more, would subsequently be rezoned to either A-1 or R-1 for the purposes of residential development. The petitioner would be agreeable to

Mr. Christopher M. Gratz
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Page 4

placing deed restrictions on those lots to require that they be made compatible with the size, price structure and design of the homes found in Paradise Pines. Further, the church facility would comply with all of the requirements of the new Town ordinances with regard to both the rural lifestyles issues and the designation of that area as a scenic way. For these reasons and those previously enumerated in the justification statement accompanying each application, both applications merit favorable consideration.

Sincerely,


JOHN D. VOIGT
For the Firm

JDV/kdr

cc: Hanmi Baptist Church

Prepared by:
John D. Voigt
Doumar, Allsworth, et al.
1177 S.E. Third Avenue
Ft. Lauderdale, FL 33316

Return to:
Town Clerk's Office
6591 Orange Drive
Davie, Florida 33314

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS that the undersigned, HANMI BAPTIST CHURCH, whose mailing address is 1219 Fairlake Trace, #99, Weston Florida 33326, being the owner of that certain real property located in the Town of Davie, Broward County, Florida, and described on Exhibit "A" attached hereto and made a part hereof ("Property"), voluntarily make the following Declaration of Restrictions covering the above-described Property, specifying that this Declaration of Restrictions shall constitute a covenant running with the land and that this Declaration shall be binding upon the undersigned and upon all persons deriving or taking title through the undersigned. These restrictions, during their lifetime, shall be for the benefit of the Town of Davie, Florida.

1. The Property shall be used only for the following uses:

A Church/House of Worship
All Ancillary and Attendant uses normally associated
with such a facility, including but not limited to Church
Offices, Kitchen Facilities, and Child Care during Church
activities and functions

2. The above-described Property shall not be used for the following:

- School
- Nursing Home
- A.C.L.F.
- Day Care Center (except that the Church may provide
Child Care services to members and guests during
Church activities and functions)
- Hospital
- Mausoleum
- Cemetery
- Mental Institution
- Residential/Life Care Facility
- Flood Control
- Telecommunication Towers
- Civic Center

3. These covenants are to run with the land and shall be binding upon all parties and persons deriving or taking title through the undersigned from the date these covenants are recorded in the Public records of Broward County, Florida. This Declaration of Restrictions, may be amended or removed only by the Town of Davie, Florida, by a written document of equal formality and dignity and with the approval of the undersigned or their successors or assigns. Any amendment to this Declaration of Restrictions or termination thereof shall be recorded in the Public Records of Broward County, Florida. Nothing herein shall prevent the declarant or its successors in title or assigns from applying to the Town of Davie, Florida, for modification of this Declaration of Restrictions or termination hereof.

4. Invalidation of any one portion of this Declaration of Restrictions or any portion of this document by judgment or court order in no way shall affect any other provisions, which shall remain in full force and effect.

5. This Declaration of Restrictions is executed for the purpose of protecting the

health, safety, and welfare of the citizens of the Town of Davie.

IN WITNESS WHEREOF, I have set my hand and seal this ____ day of _____,

2002.

Signed, sealed and delivered:

HANMI BAPTIST CHURCH

By: _____

WITNESS

Print: _____

WITNESS

Print: _____

STATE OF FLORIDA)

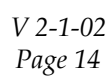
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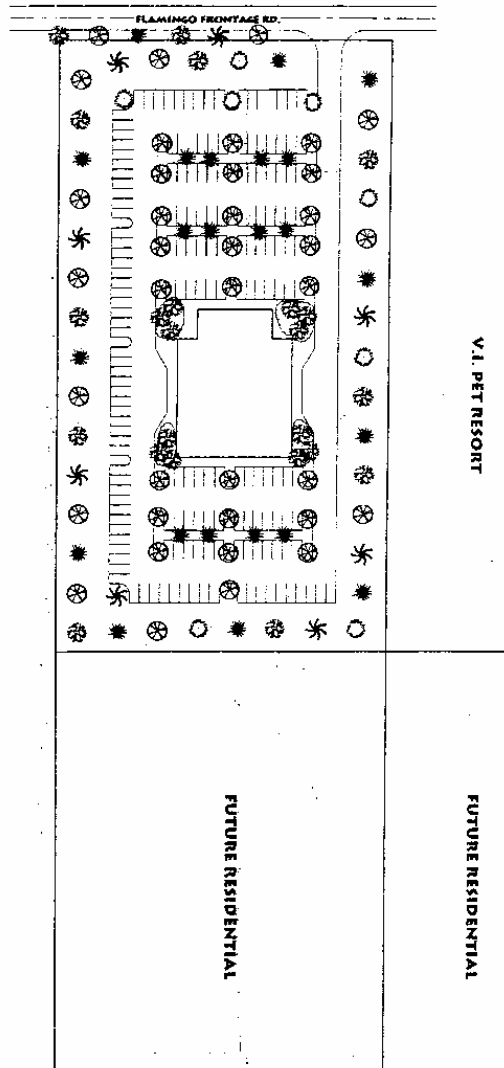
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, as _____ of _____.
He is personally known to me or has produced _____ as identification.

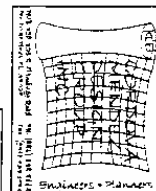
NOTARY PUBLIC:

Print Name: _____





SITE DATA
 PROJECT NO. 01-10-1
 DATE 9/23/03
 DRAWN BY [illegible]
 CHECKED BY [illegible]



CONCEPTUAL MASTER PLAN

DATE	9/23/03
PROJECT NO.	01-10-1
SCALE	1" = 100'
DATE	9/23/03
PROJECT NO.	01-10-1
SCALE	1" = 100'

HANMI BAPTIST CHURCH

TOWN OF DAVIE, FLORIDA
 FOR: HANMI BAPTIST CHURCH

MARK L. SCHMIDT

8320 W. Sunrise Boulevard, Suite 215
Plantation, FL 33322
Phone - 954.472.6450
Fax - 954.472.6420
E-Mail Address - bizops4mls@cs.com

August 27, 2002

VIA FACSIMILE: 954.525.3423

Mr. John Voigt
DOUMAR, ALLSWORTH, CURTIS,
CROSS, LAYSTROM, PERLOFF,
VOIGT, WACHS, MAC IVER & ADAIR, LLP
1177 Southeast Third Avenue
Fort Lauderdale, FL 33316-1109

RE: Hanmi Baptist Church
Proposed Rezoning of Tract 46

Dear John:

Thank you for sending the sight plan over for our perusal.

Felix Braverman, the Vice President of the Paradise Pines H.O.A., and I have reviewed the site plan and have one recommendation. We would like a 6' concrete wall as a barrier between the residential area and the church. This wall, of course, should be heavily landscaped and supported with a berm, as well.

With this recommended change, my wife and I along with Felix Braverman, Vice President representing the Paradise Pines H.O.A., believe this is an excellent site plan, and we recommend approval.

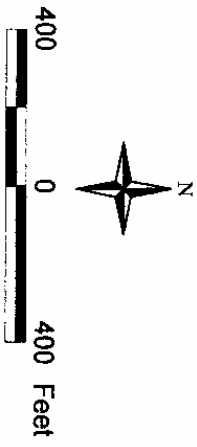
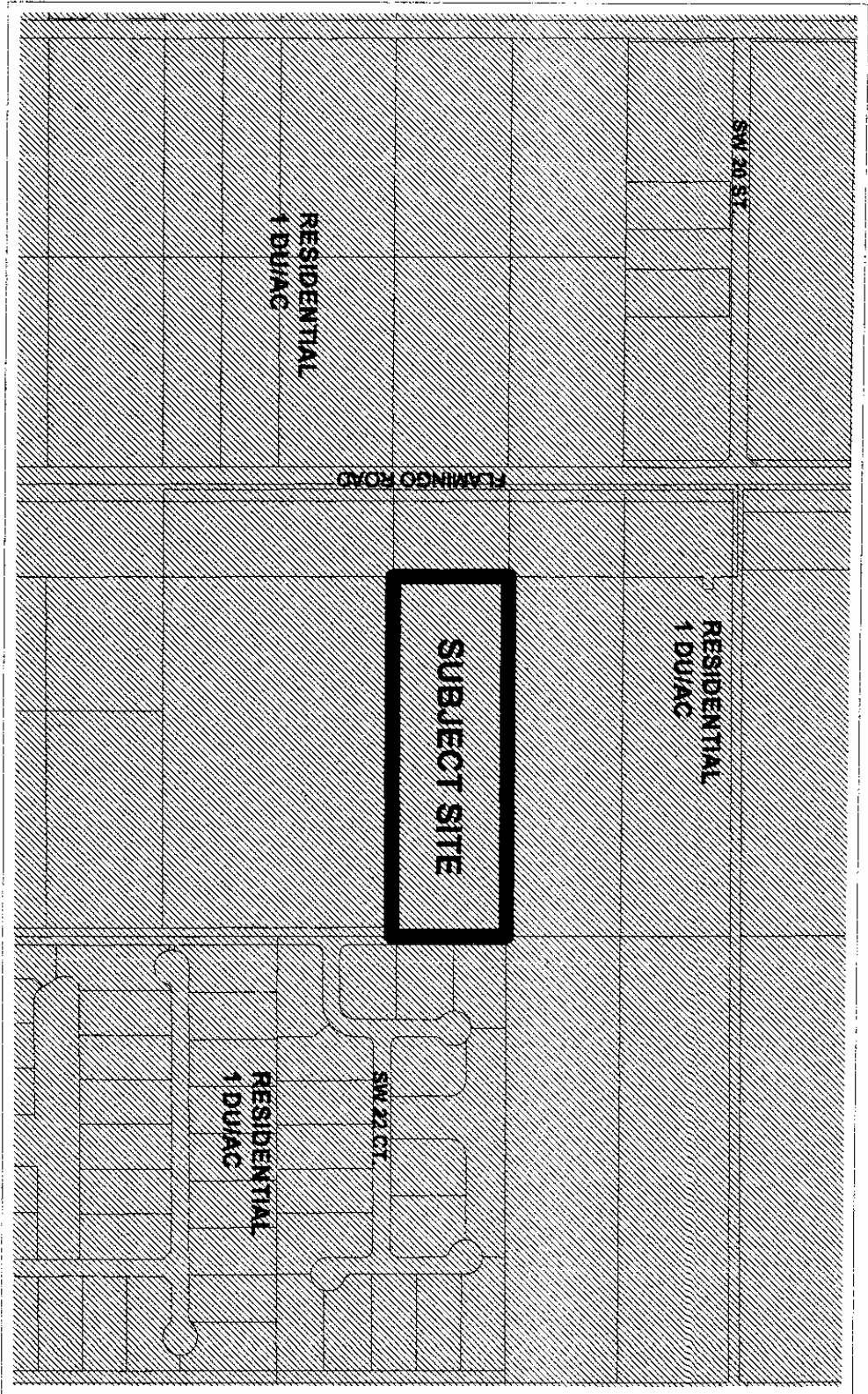
Yours truly,



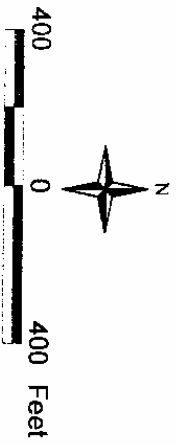
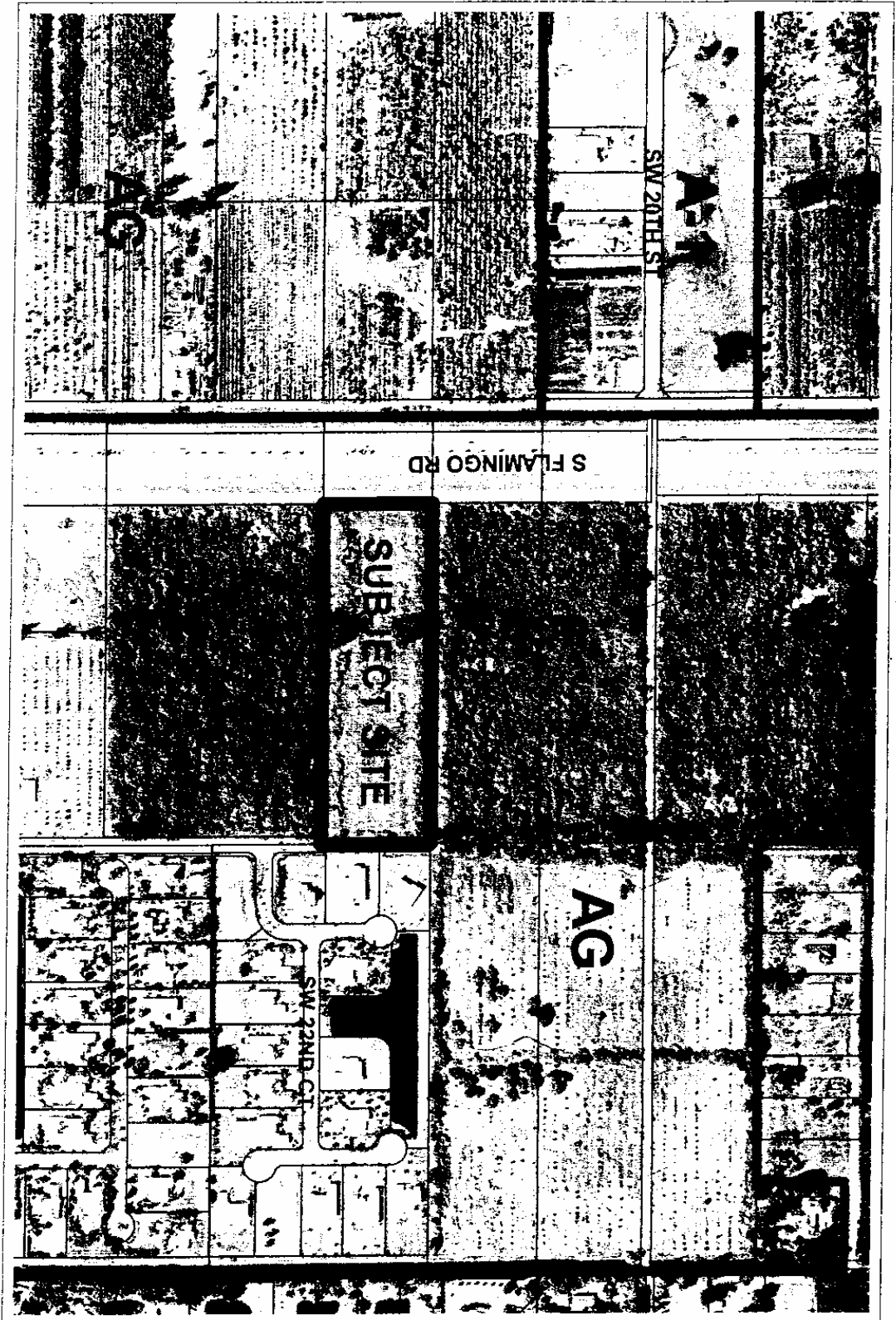
Mark L. Schmidt



Felix Braverman, Vice President
PARADISE PINES H.O.A.



PETITION NUMBER: V2-1-02
 FUTURE LAND USE MAP
 SCALE: 1"=400'
 TOWN OF DAVIE
 PLANNING & ZONING DIVISION - GIS
 PREPARED: 3/8/02



PETITION NUMBER: V 2-1-02

DATE FLOWN: JANUARY 2001

SCALE: 1"=400'

TOWN OF DAVIE

PLANNING & ZONING DIVISION - GIS

PREPARED: 3/8/02